



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2005 REGULAR SESSION

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SENATE BILL NO. 96

AS ENACTED

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TUESDAY, MARCH 8, 2005

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RECEIVED AND FILED  
DATE March 31, 2005  
8:44 AM

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TREY GRAYSON  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Adler

AN ACT relating to crimes and punishments.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

1       Section 1. KRS 514.040 is amended to read as follows:

2       (1) A person is guilty of theft by deception when the person obtains property or services  
3       of another by deception with intent to deprive the person thereof. A person deceives  
4       when the person intentionally:

5       (a) Creates or reinforces a false impression, including false impressions as to law,  
6       value, intention, or other state of mind;

7       (b) Prevents another from acquiring information which would affect judgment of  
8       a transaction;

9       (c) Fails to correct a false impression which the deceiver previously created or  
10       reinforced or which the deceiver knows to be influencing another to whom the  
11       person stands in a fiduciary or confidential relationship;

12       (d) Fails to disclose a known lien, adverse claim, or other legal impediment to the  
13       enjoyment of property which the person transfers or encumbers in  
14       consideration for the property obtained, whether the impediment is or is not  
15       valid or is or is not a matter of official record; or

16       (e) Issues or passes a check or similar sight order for the payment of money,  
17       knowing that it will not be honored by the drawee.

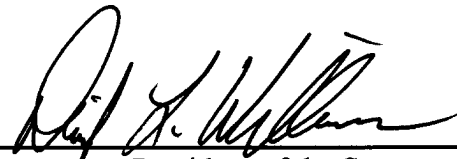
18       (2) The term "deceive" does not, however, include falsity as to matters having no  
19       pecuniary significance or puffing by statements unlikely to deceive ordinary persons  
20       in the group addressed.

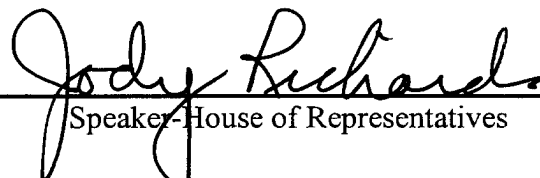
21       (3) Deception as to a person's intention to perform a promise shall not be inferred from  
22       the fact alone that he did not subsequently perform the promise.

23       (4) For purposes of subsection (1) of this section, a maker of a check or similar sight  
24       order for the payment of money is presumed to know that the check or order, other  
25       than a postdated check or order, would not be paid, if:

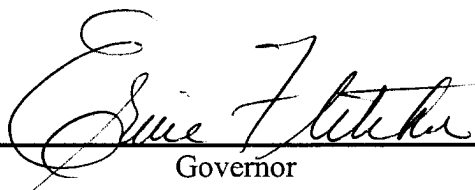
- 1 (a) The maker had no account with the drawee at the time the check or order was  
2 issued; or
- 3 (b) Payment was refused by the drawee for lack of funds, upon presentation  
4 within thirty (30) days after issue, and the maker failed to make good within  
5 ten (10) days after receiving notice of that refusal. Notice of the refusal may  
6 include a citation to this section and a description of this section's criminal  
7 penalties and shall be deemed properly addressed when mailed to the  
8 address printed or written on the check or sight order or provided by the  
9 drawer or maker upon issuance of the check or sight order. The notice, if  
10 mailed, shall be deemed received by the addressee seven (7) days after it is  
11 placed in the United States mail. The notice may be sent by first-class mail  
12 if supported by an affidavit of service setting out the contents of the notice,  
13 the address to which the notice was mailed, that correct postage was  
14 applied, and the date the notice was placed in the United States mail. A  
15 maker makes good on a check or similar sight order for the payment of money  
16 by paying to the holder the face amount of the instrument, together with any  
17 merchant's posted reasonable bad check handling fee not to exceed twenty-  
18 five dollars (\$25) and any fee imposed pursuant to subsection (5) of this  
19 section.
- 20 (5) If a county attorney issues notice to a maker that a drawee has refused to honor an  
21 instrument due to a lack of funds as described in subsection (4)(b) of this section,  
22 the county attorney may charge a fee to the maker of twenty-five dollars (\$25), if  
23 the instrument is paid. Money paid to the county attorney pursuant to this section  
24 shall be used only for payment of county attorney office operating expenses. Excess  
25 fees held by the county attorney on June 30 of each year shall be turned over to the  
26 county treasurer before the end of the next fiscal year for use by the fiscal court of  
27 the county.

- 1 (6) A person is guilty of theft by deception when the person issues a check or similar  
2 sight order in payment of all or any part of any tax payable to the Commonwealth  
3 knowing that it will not be honored by the drawee.
- 4 (7) A person is guilty of theft by deception when the person issues a check or similar  
5 sight order in payment of all or any part of a child support obligation knowing that it  
6 will not be honored by the drawee.
- 7 (8) Theft by deception is a Class A misdemeanor unless the value of the property,  
8 service, or the amount of the check or sight order referred to in subsection (6) or (7)  
9 of this section is three hundred dollars (\$300) or more, in which case it is a Class D  
10 felony.

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker House of Representatives

Attest:   
\_\_\_\_\_  
Chief Clerk of Senate

Approved   
\_\_\_\_\_  
Governor

Date   
\_\_\_\_\_